



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2018-0548]

RIN 1625-AA08

Special Local Regulation; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 754.0 to MM 760.0. This action is necessary to provide for the safety of persons, vessels, and the marine environment during the Owensboro Airshow. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from noon through 4 p.m. on September 13, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0548 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Riley Jackson, Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5348, email SECOHV-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The City of Owensboro notified the Coast Guard that it would be conducting an airshow practice over the Ohio River from mile marker (MM) 754.0 to MM 760.0 from noon to 4 p.m. on September 13, 2018. In response, on June 27, 2018 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Ohio River, Owensboro, KY (83 FR 30089). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this airshow. During the comment period that ended July 27, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the airshow practice.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the airshow on September 13, 2018 will be a safety concern for anyone on a six-mile stretch of the Ohio River. The purpose of this rule is to ensure safety of

persons, vessels, and the marine environment on the navigable waters in the regulated area before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 27, 2018. There are no changes in the regulatory text of this rule from the text proposed in the NPRM.

This rule establishes a special local regulation from noon through 4 p.m. on September 13, 2018. The special local regulation area will cover all navigable waters of the Ohio River, extending the entire width of the river, between MM 754.0 and MM 760.0 in Owensboro, KY. The duration of the special local regulation is intended to ensure the safety of persons, vessels, and the marine environment on these navigable waters before, during, and after the Owensboro Airshow.

No vessel or person will be permitted to enter the special local regulation area without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. They may be contacted on VHF-FM Channel 16 or by telephone at 1-800-253-7465. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast

Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

Spectator vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and, when so directed by that officer, will be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the airshow.

The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the regulated area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate enforcement of the special local regulation at the conclusion of the airshow. The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing

Regulation and Controlling Regulatory Costs” (April 5, 2017). This regulatory action determination is based on the size, location, duration, and time-of-day of the temporary special local regulation. This special local regulation restricts transit on a six-mile stretch of the Ohio River for four hours on one day. Moreover, the Coast Guard will issue BNMs, LNM, and MSIBs about this special local regulation so that waterway users may plan accordingly for this short restriction on transit. In addition, the rule allows vessels to request permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities

between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security (DHS) Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulation that will prohibit entry on a six-mile stretch of the Ohio River for four hours on one day. It is categorically excluded from further review under paragraph L(61) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 33 CFR 1.05-1.

2. Add § 100.35T08-0548 to read as follows:

§ 100.35T08-0548 Special Local Regulation; Ohio River, Owensboro, KY.

(a) Location. The following area is a temporary special local regulation: all navigable waters of the Ohio River, extending the entire width of the river, between mile marker (MM) 754.0 and MM 760.0, Owensboro, KY.

(b) Effective period. This section is effective from noon through 4 p.m. on September 13, 2018.

(c) Special local regulations. (1) In accordance with the general regulations in §100.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley. They may

be contacted on VHF-FM Channel 16 or by telephone at 1-800-253-7465. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the airshow.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the regulated area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative can terminate enforcement of the special local regulation at the conclusion of the airshow.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: August 23, 2018

M. B. ZAMPERINI

Captain, U.S. Coast Guard

Captain of the Port Sector Ohio Valley.

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